

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County
Deadra L. Jefferson, Circuit Court Judge

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OCT - 8 2014

S.C. Supreme Court

LEONARD JARVIS ROPER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001678

JOHNSON PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Trial counsel erred in failing to fully explain sentencing consequences to petitioner in his case.

STATEMENT

Petitioner Leonard Jarvis Roper pled guilty to distribution of cocaine within proximity of a school and five counts of trafficking in cocaine during the November 2009 term of the Charleston County General Sessions Court before Judge Roger M. Young. Petitioner was sentenced to imprisonment for an aggregate period of twenty years. App. 1 – 27. Alex N. Apostolou represented petitioner at the plea proceeding, and Assistant Solicitor Stephanie Linder appeared on behalf of the state. Petitioner appealed, but the appeal was subsequently dismissed. See State v. Roper, Unpublished Op. No. 11-UP-257 (S.C. Ct. Appeals filed June 1, 2011). LaNelle C. Durant represented petitioner on direct appeal.

On June 1, 2012, petitioner filed a PCR application with the Charleston County Office of the Clerk of Court. App 29 – 42. The respondent filed a return on January 23, 2013, requesting that a hearing be held in response to petitioner's PCR action filed in the case. App. 43 – 47.

On May 21, 2013, a PCR hearing was held at the Charleston County Courthouse before Judge Deadra L. Jefferson. Petitioner was present at the PCR hearing and represented by Jonathan Chaplain, Nicole L. Singletary, and Edmund Givens; and Assistant Attorney General Ashleigh R. Wilson appeared on behalf of the state. App. 49 – 170. On September 24, 2013, Judge Jefferson filed an Amended Order of Dismissal denying petitioner's allegations of ineffective assistance of trial counsel in this case. App. 189 – 204.

Petitioner appealed Judge Jefferson's Amended Order of Dismissal. This petition follows.

ARGUMENT

Trial counsel erred in failing to fully explain sentencing consequences to petitioner in his case.

A confidential informant made controlled buys of cocaine from petitioner in Charleston County on September 10, 2008, September 18, 2008, October 10, 2008, October 22, 2008, and November 12, 2008. App. 10, l. 12 – p. 11, l. 19.

During the PCR hearing, petitioner testified that his attorney promised him that he would receive a five-year sentence in exchange for his pleas to reduced charges of trafficking (second offense between 10 - 28 grams) and as a result, he pled guilty in reliance upon counsel's promise. App. 59, l. 20 – p. 60, l. 5; App. 65, l. 7 – 25; App. 68, l. 1 – 7; App. 76, l. 22 – p. 77, l. 14; App. 98, l. 19 – p. 100, l. 2.

Trial counsel testified at the PCR hearing and explained that he “never told [petitioner] that he was going to get five years,” but rather advised as follows:

Q. Can you go through your discussions with Mr. Roper about that plea offer?

A. The discussions that I had at that plea offer were right up to the days before the plea. We were able to get the State to come down off mandatory minimum from twenty-eight to one hundred to the ten to twenty-eight category. My recollection of those is that I communicated to him that the mandatory minimum would be reduced from seven to five, and the only offer is the one that he pled to. The law has subsequently changed since this, but I think that it was five to twenty-five at that point.

Q. But you never told him that he was going to plead guilty to five years?

A. I never told him that he was going to get five years. No. App. 117, lines 1 – 17.

The PCR judge ruled that counsel was not ineffective for providing any alleged erroneous sentencing advice to petitioner as he was advised that the sentencing range on the charges was from five to thirty years. App. 217 – 218.

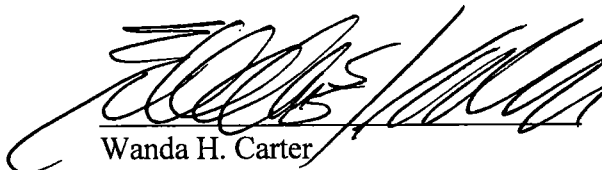
Apparently, counsel was not clear in advising petitioner of the definition of a sentencing range to the extent that five years would not be the only sentence possible to receive, but rather would be the mandatory minimum prison term. Petitioner somehow understood counsel's advice to mean that the five-year portion of the sentencing range was the only sentencing possibility that applied to his case.

In order for a defendant to plead guilty, he must have a full understanding of the sentencing consequences of his plea. Simpson v. State, 317 SC 506, 455 S.E. 2d 175 (1195); Pittman v. State, 337 S.C. 597, 524 S.E. 2d 623 (1999); Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989); State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980). Here, counsel's failure to explain to petitioner that the mandatory minimum sentencing prison term was the not the only possible sentence that he might receive in the case constituted deficient representation that violated petitioner's Sixth Amendment right to effective assistance of counsel during a plea proceeding. See Hill v. Lockhart, 484 U.S. 52 (1985). Petitioner pled guilty in reliance on counsel's misadvice regarding sentencing expectations and was prejudiced as a result because he was denied the option of exercising his right to a trial by jury due to counsel's sentencing misadvice in the case.

CONCLUSION

Based on the foregoing argument, petitioner requests that the Court grant the petition and allow full briefing on the issue.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 8th day of October, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO CHARLESTON COUNTY
DEADRA L. JEFFERSON, CIRCUIT COURT JUDGE

LEONARD JARVIS ROPER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001678

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Leonard Roper states:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. She has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on May 21, 2013. In her opinion seeking certiorari from the order of dismissal is without merit.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Leonard Roper.

Respectfully submitted,



Wanda H. Carter

Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 8th day of October, 2014

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Deadra L. Jefferson, Circuit Court Judge

LEONARD JARVIS ROPER,

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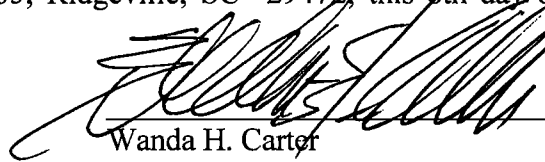
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

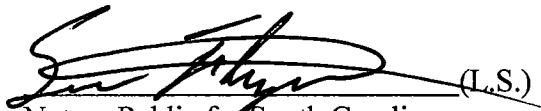
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Ashleigh R Wilson, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Leonard Roper, #338094, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 8th day of October, 2014.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 8th day
of October, 2014.



(I.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.